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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554  
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In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments ) MB Docket No. 05-151  
FM Broadcast Stations ) RM - 11222  
(Llano and Junction, Texas) )

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

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Federal Communications Commission  
Office of Secretary

REPLY COMMENTS

Capstar TX Limited Partnership, CCB Texas Licenses, L.P., Clear Channel Broadcasting Licenses, Inc., and Rawhide Radio, L.L.C. (together, "Joint Parties"), by their attorneys and pursuant to the Public Notice, Report No. 2720 (July 8, 2005), hereby reply to the counterproposal of Munbilla Broadcasting Properties ("Munbilla"). In support hereof, the Joint Parties state as follows:

1. Munbilla's counterproposal to allot Channel 297A at Goldthwaite, Texas is unacceptable for filing. It is barred by a *Report and Order* dismissing the identical proposal -- Channel 297A at Goldthwaite, Texas -- in MM Docket No. 01-154, 19 FCC Rcd 4810 (2004), *app. for review pending* (copy attached). In that *Report and Order*, the Commission dismissed the Goldthwaite proposal due to its untimeliness to the Joint Parties' proposal for Channel 297A as a substitute channel at Llano for Station KBAE in MM Docket 00-148 (*Quanah, Texas et al.*).<sup>1</sup> Further, the *Report and Order* cautioned that "in the event that the Joint Parties' counterproposal is ultimately dismissed or Channel 297A is not allotted in the *Quanah, Texas*

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proceeding, Petitioner may re-file the proposal for Channel 297A at Goldthwaite, Texas.”<sup>2</sup> In other words, a re-filing of the Goldthwaite proposal is untimely unless and until the *Quanah* proceeding is resolved.<sup>3</sup> Therefore the Commission should dismiss Munbilla’s counterproposal for Channel 297A at Goldthwaite due to its untimeliness with respect to the *Quanah* proceeding. The Goldthwaite proposal is no less untimely now than it was when filed in MM Docket 01-154 approximately 4 years ago.

2. There is another, independent reason why the Commission should dismiss Munbilla’s counterproposal. If Munbilla’s counterproposal were acceptable, then so would the 2001 petition for Goldthwaite, which, as discussed above, is identical. That proceeding (Docket 01-154) is not final, being the subject of an Application for Review. Should the Commission decide that a Goldthwaite proposal is acceptable notwithstanding its untimeliness, it would have to give priority to the first to file. Munbilla’s proposal would be merely a second expression of interest in Channel 297A at Goldthwaite, and not a valid counterproposal.

3. However, even if the Commission accepts Munbilla’s counterproposal despite several good reasons for not doing so, it would lose on comparative grounds. The Joint Parties filed comments in this proceeding noting that their counterproposal in MB Docket No. 05-112 (Fredericksburg, Texas) was directly in conflict with the petition in this proceeding, as well as being timely to this proceeding, and thus the two proceedings should be consolidated and decided together. The Joint Parties’ *Fredericksburg* counterproposal is also in conflict with

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<sup>1</sup> See *Quanah, Texas, et al.*, 18 FCC Rcd 9495 (2003), *recon. denied*, 19 FCC Rcd 7159 (2004), *app. for review pending*. Note that the Joint Parties’ proposal in *Quanah* had been dismissed at the time of the *Goldthwaite Report and Order*, and a petition for reconsideration of that action was pending.

<sup>2</sup> 19 FCC Rcd at 4811.

<sup>3</sup> The quoted language was addressed to the original petitioner for Goldthwaite, but it applies equally to Munbilla. It is inconceivable that Munbilla could file an untimely proposal when another party is barred.

Munbilla's counterproposal to allot Channel 297A at Goldthwaite. Specifically, the Joint Parties request, *inter alia*, the allotment of Channel 297A at Llano, Texas, which is too close to Goldthwaite for the two allotments to coexist. Accordingly, the Commission must decide which of the four proposals before it (the Llano petition, the Goldthwaite counterproposal, the Fredericksburg petition, and the Joint Parties' counterproposal) should be granted, alone or in combination.

4. Of the conflicting proposals before the Commission in the two proceedings, the Joint Parties' counterproposal is clearly favored under the Commission's allotment priorities over any combination of the alternative proposals.<sup>4</sup> The original petition in this proceeding would provide Llano with its fourth local service, which would further priority 4. The Goldthwaite counterproposal would provide Goldthwaite (2000 pop. 1,802) with its first local service, which would further priority 3. The Fredericksburg petition would provide Fredericksburg (pop. 8,911) with its third local service (priority 4). By contrast, the Joint Parties' counterproposal would provide first local services to three communities: Lakeway, Texas (pop. 8,002), Lago Vista, Texas (pop. 4,507), and Converse, Texas (pop. 11,508), for a combined population of 24,017 in the communities gaining first local service. The Joint Parties' counterproposal is clearly favored under priority 3, and it offers other benefits as well, including the elimination of two preexisting short spacings and the provision of new radio service to a population of more than one million people.

5. Munbilla, the proponent at Goldthwaite, has argued that the Joint Parties' counterproposal is defective, because it fails to protect a construction permit issued to Munbilla

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<sup>4</sup> The Commission's allocation priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

for its Station KHLB-FM, Burnet, Texas. However, Munbilla has the relative protection priorities wrong. The Joint Parties originally filed their counterproposal on October 10, 2000 in MM Docket No. 00-148 (*Quanah, Texas, et al.*). Although that submission was dismissed by the Commission,<sup>5</sup> the Joint Parties filed a Petition for Reconsideration and an Application for Review, arguing that the counterproposal was complete and correct and should not have been dismissed. The Application for Review is pending. Some three years later, Munbilla filed its application for the Burnet construction permit. File No. BPH-20030902ADU. The application acknowledged that it was in conflict with the Joint Parties' counterproposal in MM Docket 00-148, and requested a conditional grant. The construction permit is explicitly conditioned on the final outcome of Docket 00-148, and is void if the Joint Parties' counterproposal in that proceeding is granted.

6. The Joint Parties' counterproposal in the *Fredericksburg* proceeding (which is incorporated into this proceeding by virtue of its conflict with the petition here) is the *same proposal* as is before the Commission in MM Docket 00-148. The Joint Parties were forced to file it here because the Commission has, in the *Fredericksburg* and *Llano* proceedings, accepted for comment petitions that are in conflict with the Joint Parties' original counterproposal in Docket 00-148 that remains pending today. The Commission cannot, consistent with its processing rules, consider those new petitions without considering the Joint Parties' earlier-filed and pending counterproposal with which they are in conflict. It must choose between timely mutually exclusive proposals using its long-established rules of priority. The filing of the counterproposal in the *Fredericksburg* proceeding accomplishes this goal.

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*Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Among first local services, larger communities are given higher priority. *Blanchard, Louisiana, and Stephens, Arkansas*, 10 FCC Rcd 9828 (1995).

<sup>5</sup> See *Quanah, Texas, et al.*, 19 FCC Rcd 7159 (2004).

7. However, because the Joint Parties' counterproposal was on file first, and the Munbilla construction permit was issued subject to the action taken on the Joint Parties' counterproposal Munbilla's proposal is defective. Munbilla is wrong to characterize the Joint Parties filing as a new proposal. It was re-filed in the Fredericksburg proceeding because the Commission issued a conflicting proposal. The re-filing does not make the proposal defective as Munbilla has alleged. If it is complete and correct now *but for* the conflict with Munbilla's Burnet construction permit, then it was complete and correct *ab initio* when filed in October, 2000, long before Munbilla filed its Burnet application.<sup>6</sup> Munbilla's intervening application, which is explicitly required to protect the Joint Parties' counterproposal, cannot skip ahead of the Joint Parties' counterproposal in line.

8. Moreover, regardless of the merits of the Joint Parties' counterproposal in the *Fredericksburg* proceeding, Munbilla is clearly incorrect in arguing that this proceeding should not be consolidated with *Fredericksburg*. Both of the proposals in this proceeding – the petition for Llano and the counterproposal for Goldthwaite – are in conflict with the Joint Parties' counterproposal in the *Fredericksburg* proceeding. This proceeding cannot be resolved unless the *Fredericksburg* proceeding is also resolved. Therefore, the proceedings must be consolidated and the mutually exclusive proposals in the combined proceedings compared. As discussed above, the Joint Parties' counterproposal is clearly favored in this comparison.

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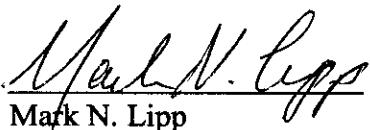
<sup>6</sup> In addition, as discussed in the Joint Parties' pleadings in Fredericksburg, there is a simple engineering solution to the conflict which would remove the mutual exclusivity between the Burnet construction permit and the Joint Parties' counterproposal through a change in transmitter site.

WHEREFORE, for the foregoing reasons, the Commission should consolidate this proceeding with Docket 05-112 (Fredericksburg, Texas) and it should grant the Joint Parties' counterproposal in that proceeding. It should deny Munbilla's counterproposal for Goldthwaite with which it is in conflict.

Respectfully submitted,

RAWHIDE RADIO, LLC

By:

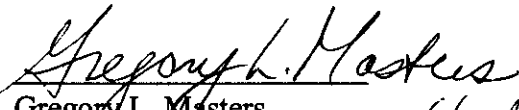
  
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Its Counsel

July 25, 2005

CLEAR CHANNEL BROADCASTING  
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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	MM Docket No. 01-154
FM Broadcast Stations.	)	RM-10163
(Goldthwaite, Texas)	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: March 17, 2004**

**Released: March 19, 2004**

By the Assistant Chief, Audio Division:

1. Before the Audio Division is the *Notice of Proposed Rule Making ("Notice")*,<sup>1</sup> issued in response to a Petition for Rule Making filed by Charles Crawford ("Petitioner"), proposing the allotment of Channel 297A to Goldthwaite, Texas, as that community's first local aural transmission service. Petitioner filed supporting comments in response to the *Notice*. First Broadcasting Company, L.P., Next Media Licensing, Inc., Rawhide Radio, L.L.C., Capstar TX Limited Partnership and Clear Channel Broadcasting Licenses, Inc. ("Joint Parties") filed comments to which Petitioner responded.<sup>2</sup> No counterproposals or other comments were filed in this proceeding.

2. In a separate proceeding in MM Docket No. 00-148, we issued a *Notice of Proposed Rule Making* proposing the allotment of Channel 233C3 to Quanah, Texas in which the deadline for filing comments and counterproposals was October 10, 2000.<sup>3</sup> The Joint Parties filed a timely counterproposal in that proceeding that included a proposal to allot Channel 297A at Llano, Texas that is mutually exclusive with the present proposal to allot Channel 297A at Goldthwaite.<sup>4</sup> The petition for rule making requesting Channel 297A at Goldthwaite, Texas, however, was filed on May 18, 2001, more than six months after the deadline for counterproposals in MM Docket No. 00-148.<sup>5</sup>

<sup>1</sup> *Goldthwaite, Texas*, 16 FCC Rcd 13927 (MMB 2001).

<sup>2</sup> Petitioner's reply comments reference comments filed in various rule making proceedings that conflicts with a counterproposal filed by the Joint Parties in MM Docket No. 00-148. The comments consist of the petitioning party's reply comments, the Joint Parties motion to strike, and an opposition thereto. However, any purported deficiency in the Joint Parties counterproposal will be considered in the context of MM Docket No. 00-148.

<sup>3</sup> See *Quanah, Texas*, 15 FCC Rcd 15809 (MMB 2000).

<sup>4</sup> The communities are 83.4 kilometers apart whereas a minimum distance of 115 kilometers is required between Class A co-channel allotments.

<sup>5</sup> When the *Notice of Proposed Rule Making* in this proceeding was issued, the staff was unaware of the mutual exclusivity between the Goldthwaite proposal and the proposal for Channel 297A at Llano, Texas in MM Docket No. 00-148 because the staff had not entered all of the proposals identified in MM Docket No. 00-148, including (continued....)

Accordingly, we are dismissing the Goldthwaite proposal as untimely.<sup>6</sup> In the event the Joint Parties' counterproposal is ultimately dismissed or Channel 297A at Llano, Texas, is not allotted in the *Quanah, Texas* proceeding, Petitioner may re-file the proposal for Channel 297A at Goldthwaite, Texas.

7. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed on May 29, 2001, by Charles Crawford, proposing the allotment of Channel 297A at Goldthwaite, Texas, IS DISMISSED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning the above, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

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the Llano, Texas proposal into the data base at that time. If the Llano proposal was entered into the database at that time, Petitioner's petition for rule making requesting the allotment of Channel 297A at Goldthwaite, Texas would have been returned unacceptable for filing.

<sup>6</sup> See *Benjamin and Mason, Texas*, 19 FCC Rcd 470 (2004) and *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).



## **CERTIFICATE OF SERVICE**

I, Scott Woodworth, in the law firm of Vinson & Elkins, L.L.P., do hereby certify that I have on this 25th day of July, 2005, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply Comments**" to the following:

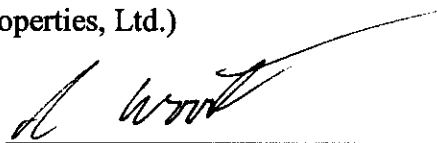
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\*Hand Delivered